

Town of Amherst
Zoning Board of Appeals - Special Permit

DECISION

Applicant: Papa Gino's
600 Providence Highway, Dedham, MA 02026

Date application filed with the Town Clerk: January 29, 2009

Nature of request: Special Permit to establish a Class II restaurant for dine-in, take-out and delivery service under Section 3.352.1 of the Zoning Bylaw.

Address: 48 North Pleasant Street (14A, Parcel 40, B-G Zone).

Legal notice: Published on February 11 and February 18, 2009 in the Daily Hampshire Gazette and sent to abutters on February 6, 2009.

Board members: Jane Ashby, Albert Woodhull, Eric Beal

Submissions:

The petitioner submitted a packet of information with the application including:

- One (1) copy of the ZBA application filed with the Town Clerk, January 29, 2009;
- One (1) copy of a GIS map of the property, prepared by the applicant;
- One (1) copy of a project summary prepared by the applicant;
- One (1) copy of the completed Management Plan form and proposed menu;
- One (1) copy of the separate Management Plan Addendum, prepared by the applicant;
- One (1) copy of a 8 ½ x 11 parking plan, prepared by the applicant;
- One (1) copy of an email dated February 12, 2009, from Christine Brestrup indicating the recommended approval by the Design Review Board of signs for Papa Gino's with sign plan attached;
- One (1) copy of a memorandum from the Fire Department, dated February 5, 2009;
- One (1) copy of the previous Special Permit for the property, ZBA FY2003-00026;
- One (1) copy of the existing conditions Site Plan, dated January 5, 1987, prepared by Land Surveyors Incorporated;
- One (1) copy of the Floor Plan, dated January 22, 2009, prepared by Aharonian & Associates, Inc.

Site Visit: February 24, 2009

Jane Ashby, Albert Woodhull and Eric Beal met with Joseph Kimmel, general manager, and observed the following:

- The exterior of the front façade, location of proposed signs, terrace and north stairway;
- The existing vehicle driveway along the south side of the building, the shared parking area mostly under the building and the location of the two (2) spaces for delivery drivers;
- The emergency exit door locations at the rear of the building which enter into the parking area;
- The interior of the restaurant including seating area, kitchen, restrooms and emergency exits;
- The Board entered into the main portion of the building to determine where the emergency exits were located.

Public Hearing: February 26, 2009

The applicant was represented by Mike Hochniuk, Regional Vice President and Joseph Kimmel, general manager.

Mr. Hochniuk presented the following information related to the application:

- Papa Gino's operates approximately 160 restaurants in communities throughout New England.
- The applicant is requesting a Special Permit to operate until 2:00 A.M., seven days a week;
- The establishment will be called Papa Gino's Pronto and offer a limited menu consisting of pizza, wings and bottled beverages for dine-in, take-out and delivery;
- There are no planned changes to the exterior of the building, other than signs;
- There are two dedicated parking spaces located at the rear of the building for the delivery drivers.

Ms. Ashby asked Mr. Hochniuk to review the proposed floor plans with the Board. Mr. Hochniuk stated the following:

- There will be a total of 40 seats;
- The tables and chairs will not be fastened to the floor;
- There will be several seats, a couch and a flat screen television at the front of the restaurant for use by patrons.

Ms. Ashby asked about the emergency exits. Mr. Hochniuk indicated that there are three (3) exits at the rear of the building. The emergency exit for patrons is located in between the two (2) existing restrooms, as shown on the plans and there are two (2) additional exits accessed by the kitchen.

Ms. Ashby stated that one of the exit doors in the kitchen is not marked clearly. Mr. Kimmel stated that there is an exit sign at the top of the door, but it cannot be seen from outside of the kitchen.

Ms. Ashby asked if there will be a plan to repair the broken light in the exit stairwell that was seen during the site visit. Mr. Kimmel stated that he had not yet spoken to his management, but would see to it that the light be repaired.

Ms. Ashby asked if the applicant had any plans to obtain a liquor license. Mr. Hochniuk stated that they do not intend to serve alcohol.

Ms. Ashby asked the applicant to discuss how any large crowds would be managed on the premises. Mr. Kimmel stated the following:

- He is excited about the potential for large numbers of people coming to the establishment and they have carefully considered the issue of crowd management;
- He intends to have enough staff on site so that they are available, visible and able to oversee the dining area and someone who can monitor the entire establishment;
- He will train all staff to have clear communication with all applicable law enforcement in the area;
- Outside, they intend to erect a gate at the north end of the stairs to keep patrons from exiting into the driveway of the Fire Department and to allow better monitoring and control of patrons outside of the building.

Mr. Woodhull noted the extensive hours of operation and asked Mr. Kimmel if there would be an Assistant Manager trained in crowd management. Mr. Kimmel replied that he is currently planning to have three (3) individuals who would act as Shift Manager. All Shift Managers are trained in a leadership course to understand the guidelines and requirements of each establishment.

Referring to the floor plan, Ms. Ashby asked if they would object to having the tables and chairs secured in a fixed position during the hours of operation. Mr. Hochniuk stated that they would prefer to have the tables and chairs free-standing to allow them to be moved or joined together to incorporate larger groups of patrons.

Ms. Ashby asked about lighting. Mr. Kimmel stated that on the inside there will be track lighting and neon lights in the kitchen area as well as the dry storage. They will be utilizing the existing exterior lights and are proposing an interior lit awning sign with gooseneck lighting as recommended by the Design Review Board.

Ms. Ashby asked how they would manage the noise levels in the restaurant so it would not be heard by the tenants on the upper floors. Mr. Kimmel stated that the noise levels would be kept low enough to provide a comfortable atmosphere for the patrons and the noise levels of any music or television would be low enough as to not be heard from upstairs.

Ms. Ashby asked how many employees would be on-site at any one time. Mr. Kimmel stated that there may be approximately 12 employees at any given time. He stated that they are initially expecting to have approximately 20-25 employees in total, in order to take care of patrons and give proper service and will probably end up with somewhere between 15-20 once they are established. Mr. Hochniuk added that after the initial opening, they will be better able to assess the employee numbers.

Ms. Ashby asked if the applicant would be agreeable to a condition limiting the number of employees to 12, or would they rather allow up to 15 employees at one time. Mr. Kimmel stated that they would prefer to be allowed to have 15 employees, including delivery drivers.

Mr. Woodhull asked whether Papa Gino's anticipates changing the menu from the limited menu to the full menu in the future and what consequences that would have on the operation of the establishment. Mr. Kimmel stated that they are trying to establish a new idea for the market. There is no plan for the menu to be expanded into a full menu. Mr. Hochniuk added that their goal is to have fewer menu items to ensure quality goods and services in order to compete with the other restaurants in the area.

Mr. Beal noted a discrepancy with the number of seats listed in the management plan, which states 40, and the number of seats shown the plan, which are around 33 seats.

Ms. Ashby asked when vendors will be delivering products to the restaurant. Mr. Hochniuk stated that they will be receiving deliveries two times a week, one of the days being Saturday and they are trying to have them done in the morning.

Mr. Woodhull asked where the deliveries would occur. Mr. Kimmel stated that it could either be through the front door or have the delivery vehicles back into the driveway and bring the products through the back door.

Ms. Ashby asked the Building Commissioner if there were any concerns. Ms. Weeks noted the typical concerns related to crowd control and management of crowds in the vicinity of the Fire Department.

Ms. Ashby asked if they had any plan to manage any rubbish that may accumulate outside of the restaurant. Mr. Kimmel stated that they would proactively keep the exterior of the restaurant free from trash and would remove any rubbish daily.

Ms. Ashby whether they have had a chance to identify what kind of gate they may have at the top of exterior stairway. Mr. Kimmel stated that he inspected the stairway and noted that at one point there appeared to be a gate with a hinge in place. He added that the previous Special Permit for Via Via had a condition requiring the gate after 9:00 P.M.

Mr. Hochniuk stated that they would like to have something aesthetically pleasing and secure with a lock. Ms. Weeks stated that there was previously a gate at the top of the stairs.

Ms. Weeks asked if they plan to have any outdoor dining. Mr. Hochniuk stated that they do not intend to have any outdoor dining on-site.

Referring to the sign plan, Mr. Beal asked if the submitted plans were the same ones that had been reviewed and recommended for approval by the Design Review Board and whether the awning was interior lit and the sign constructed of PVC. Ms. Ashby stated that the DRB approved the plans, as submitted, for an interior lit awning and sign constructed of PVC plastic.

Mr. Beal stated that he noticed during the site visit the existing lighting on the building and along the driveway to the rear parking area and asked if it is adequate for drivers and other employees. Mr. Kimmel stated that they feel that the lighting is adequate for the use of the driveway by the delivery drivers. Mr. Hochniuk stated that the safety of their employees is important and he believes there is adequate lighting at the doors at the rear of the building and along the driveway.

Ms. Ashby asked about plans for employee parking. Mr. Kimmel stated that he is applying for team member parking permits, and has applied for two. He stated that most of the team members right now are college students or who live close enough that they plan on taking the bus. He stated that he has been concentrating on making sure that parking is adequate and safe for his employees.

Mr. Woodhull noted that the Board had been provided with an email stating that the Design Review Board had reviewed and approved the sign design. Staff stated that the formal memorandum is forthcoming, but that the DRB has reviewed and recommended approval of the submitted design.

Ms. Ashby asked if anyone from the public would like to speak regarding the application. No members of the public spoke.

Mr. Woodhull made a motion to close the evidentiary portion of the public hearing. Mr. Beal seconded the motion. The Board voted unanimously to close the public hearing.

Public Meeting:

Ms. Ashby asked the Board members if they had any major objections to granting the requested permit. The Board members stated that they do not have any major objections.

Mr. Beal asked for clarification as to the role of the Design Review Board. Ms. Weeks stated that the DRB is charged with reviewing proposed changes to buildings, including signs, in order to make sure that they are compatible with the building and the area. The Zoning Board makes recommendations to improve aesthetics or legibility.

Mr. Beal stated that he cannot recall whether there are any other awnings in the downtown area that are interior lit in the same manner as the proposed awning. Mr. Beal stated that the lit awning seems somewhat novel, but that it doesn't necessarily mean it is objectionable.

Ms. Ashby stated that she did an informal scan of the downtown area and noted that there are several businesses with their names or logos on the awnings but not the internal lighting.

Ms. Ashby stated that she understands the safety issues requiring lighting in the entrance area, but that it is different from the overall glow of the awning. Mr. Beal stated that it seems like quite a large lighted element compared to other businesses in the area.

Ms. Ashby stated that she believes almost all of the restaurant establishments have wooden signs, although some banks have PVC signs, the wood signs are aesthetically more in line with the downtown area.

In referring to the memorandum from Christine Brestrup, Mr. Woodhull noted that the DRB recommended that the applicant consider changing the exterior lighting fixtures on either side of the front side with the gooseneck fixtures. He added that it seems to be something that the Zoning Board could insist on that the lighting fixtures be downcast, as they require in nearly all applications. Mr. Hochniuk stated that they do intend to install the downcast gooseneck lighting, as recommended.

Mr. Beal stated that the interior lit awning may not be consistent with most of the other signs in the downtown area and stated that a different type of sign with external lighting fixtures might be more appropriate. Ms. Ashby noted that the lit awning may be intrusive and cause light pollution because it will be on until 2:00 A.M. every day and there is existing lighting in the terrace area, so the lit awning is not providing safety lighting. Mr. Woodhull agreed that the sign may not fit in with the character of the downtown, but suggested that the Design Review Board conducts the review of the signs more frequently and might be better suited to make changes to the design and that the Board should review it in connection with the Zoning requirements.

Ms. Ashby stated that she understands that the applicant's are concerned with the visibility of the sign from the downtown area. However, the Board's concern is that the visibility be in keeping with the rest of the downtown area.

Mr. Woodhull expressed concern with the financial burden and ability of Papa Gino's to be able to incorporate the change of material from PVC plastic to wood. Mr. Hochniuk stated that, to his knowledge, Papa Gino's does not have any wooden signs in Massachusetts.

Ms. Ashby noted that Papa Gino's is a chain restaurant; however, the Board still needs to ensure that the signs are in keeping with the downtown area. She noted the Subway sign, which is wooden, is clearly recognizable and still fits in with the downtown area.

Mr. Beal recommended that the applicant consider having a wooden sign in place of the plastic sign facing North Pleasant Street and a wooden sign in place of the awning which faces the Fire Station property, with gooseneck lighting above.

The Board agreed and determined that they shall provide a new sign plan showing wooden signs on the north and east sides with an portion of the east side containing an unlit awning to come back to the Board for review and approval at a public meeting.

Ms. Ashby expressed concern over the interior seating arrangement not be fastened to the floor and the potential for the serving of alcohol in the future. Ms. Weeks stated that the main concern with the serving of alcohol and seating arrangements is associated with low level lighting, and the ability to move tables and chairs. Ms. Weeks added that it is a change of the Building Code to change from a restaurant to a bar use.

Mr. Beal stated that he has no problem with the number of proposed seats, but is concerned with the fact that the seating arrangement could change and that there are less seats shown than what is being requested.

Ms. Ashby stated that they could require the applicant to come back at a public meeting with a final seating arrangement.

Mr. Hochniuk stated that he didn't know why the seating arrangement doesn't show all 40 seats. He added that they may actually only have three (3) additional free-standing chairs along the front window and that everything else is what it should be. Mr. Woodhull stated that he counts 33 seats and it appeared that there would be room for a few more. Mr. Kimmel said that at most, there would be four (4) more seats.

Mr. Woodhull asked if they need to have the applicant come back if the Board is satisfied with the number of seats. He added that he doesn't think the Board should micro-manage the interior of the restaurant and the applicant is requesting seating for 40 and that the table and chairs are movable anyway. Ms. Ashby stated that in the past, the Board has asked for the submission of the seating plan that will be implemented. Staff added that the Board, with the assistance of the applicant, could mark up the plans to reflect the location of the additional seats. Ms. Weeks added that a condition could state a maximum of 40 patrons be allowed, plus employees and that would allow for seating for 37 plus a few patrons waiting for pick-up.

The Board determined that they would amend the plan to show the additional seating arrangement before approving it.

Ms. Ashby stated that she would like to have the applicant provide parking permits for its employees. Mr. Hochniuk asked if the parking permits are transferable if an employee quits. The Board responded that they are not.

Mr. Kimmel stated that there is an employer permit which Papa Gino's would purchase which allows the permit to be given to each employee on the day they are scheduled to work. Ms. Ashby stated that this system is unlikely to work because it requires an employee to go to the restaurant, park their vehicle, go in and get the permit, then re-park the vehicle somewhere else. Ms. Ashby stated that Papa Gino's could require the employee to get the permit. She added there is no parking required for the restaurant, but there is a concern with employees parking at downtown area meters and thus eliminates the available spaces for visitors.

Mr. Woodhull stated that the Board should encourage Papa Gino's to have their employees find other means of getting to work other than a private vehicle.

Mr. Beal stated that he agrees with Mr. Woodhull, but believes that the Board should make a requirement that if employees do bring their own vehicle they have to park in designated areas and that they should have to have a parking permit. Mr. Beal added that perhaps the Board would require that no employees park in any metered spaces.

Ms. Ashby stated that the business exists in a Municipal Parking District which means they are not exempt from the usual requirement that a business provide on-site parking for employees, as in other zoning districts in Amherst. Therefore, Papa Gino's should ensure that its employees park in the appropriate, permitted areas downtown. The trade-off for not having to provide on-site parking is the provision of parking permits for their employees.

Mr. Woodhull stated that he has sat on several panels for restaurants in the downtown area and that they have never required an applicant to provide parking permits for employees.

Ms. Ashby responded that it is within the scope of the Board to require that businesses provide parking permits to employees and noted that the Board is not ruled by precedent. She stated that this condition would not require that the permits be provided free of charge to the employees.

Mr. Kimmel stated that he has done research on parking permits, and that he has gotten verbal commitment from employees to not drive and further that he has already explained to his team members that buying a parking permit is more cost effective than paying for a meter during every shift.

Ms. Ashby stated that the management should be responsible for arranging the availability of parking permits for its employees; asking the employee to pay the cost of the permit would provide an incentive to park where they should be parking rather than in the metered spaces. She noted that Mr. Kimmel's earlier comment that if they kept the job for 1 month, they will have gotten their money's worth from the permit.

Mr. Woodhull stated that the Town is planning on increasing the enforcement of metered parking spaces and those employees would learn quickly that purchasing a permit will be beneficial to them, even in the short term.

The Board determined that they would condition the permit so that Papa Gino's is responsible for providing parking permits for a minimum of 20 of 25 employees.

Findings:

The Board finds under Section 10.38 of the Zoning Bylaw, Specific Findings, required of all Special Permits, that:

10.380 and 10.381 – The proposal is suitably located in the neighborhood in which it is proposed and is compatible with existing uses and other uses in the district. The proposed restaurant is located in the General Business Zoning District which allows Class II restaurants by Special Permit and is in close proximity to other similar uses. The hours of operation and management of the restaurant are similar to the other restaurant uses in the downtown area.

10.382, 10.383 and 10.385 – The proposal will not constitute a nuisance due to air pollution, lights or visually offensive structures; will not be a substantial inconvenience or hazard to abutters; and reasonably protects adjoining premises. The proposal will not produce any air pollution or visually offensive structures. The proposal avoids nuisance lighting by requiring the proposed signs to be lit by downcast lighting. The proposal reduces any hazard to abutter's by requiring the installation of a gate on the north stairway to reduce pedestrian traffic from crossing or intruding into the Fire Department access way.

10.384 and 10.387 - Adequate and appropriate facilities will be provided for the proper operation of the use and will provide convenient and safe movement. The approved Management Plan identifies a suitable number of employees to adequately manage patrons while providing quality service, identifies a maximum number of patrons less than what may be allowed and provides for the management of patrons outside of the establishment. The interior of the restaurant provides for suitable space and access to emergency exits and restroom facilities for patrons and employees. The site provides designated parking spaces for delivery employees and the management shall provide up to 20 employees with parking permits to help alleviate pressure on the limited number of metered public parking spaces available for employees and visitors in the downtown area.

10.386 - The proposal ensures that it is in conformance with the Parking and Sign regulations (Articles 7 and 8, respectively) of this Bylaw. The project includes signs that are in conformance with the size requirements of Article 7 and is compatible with similar signs in the downtown area. The property is exempt from the parking requirement because it is located within the Municipal Parking District and the permit requires the management to provide parking permits for up to 20 employees to help alleviate pressure on the limited number of metered parking spaces available for employees and visitors in the downtown area.

10.388 - The proposal ensures adequate space for the off-street loading and unloading of vehicles, goods, products, materials and equipment incidental to the normal operation of the establishment or use. All delivery of goods and products shall be made prior to 11:00 A.M. and occur through the existing driveway and service entrance at the rear of the restaurant.

10.398 - The proposal is in harmony with the general purpose and intent of the Zoning Bylaw and promotes the health, safety, convenience and general welfare of the inhabitants of the Town of Amherst. The proposal is compatible with the existing uses in the downtown area. The proposal provides an adequate number of employees to ensure proper management of the operation and patrons. The management shall provide parking permits to 20 employees to alleviate pressure on the limited number of metered parking spaces available for employees and visitors in the downtown area.

Public Meeting - Zoning Board Decision:

Mr. Beal made a motion to APPROVE the application, with conditions. Mr. Woodhull seconded the motion.

For all the reasons above, the Board VOTED unanimously to grant a Special Permit to establish a class II restaurant, to be known as Papa Gino's Pronto, with dine-in, take-out and delivery service under Section 3.352.1 of the Zoning Bylaw, at 48 North Pleasant Street (Map 14A, Parcel 40, B-G, MPZ Zone), with conditions.

JANE ASHBY

ALBERT WOODHULL

ERIC BEAL

FILED THIS _____ day of _____, 2009 at _____,
in the office of the Amherst Town Clerk _____.
TWENTY-DAY APPEAL period expires, _____ 2009.
NOTICE OF DECISION mailed this _____ day of _____, 2009
to the attached list of addresses by _____, for the Board.
NOTICE OF PERMIT or Variance filed this _____ day of _____, 2009,
in the Hampshire County Registry of Deeds.

**Town of Amherst
Zoning Board of Appeals**

SPECIAL PERMIT

The Amherst Zoning Board of Appeals hereby grants a Special Permit, ZBA FY2009-00024, to establish a Class II restaurant, known as Papa Gino's Pronto, with dine-in, take-out and delivery service under Section 3.352.1 of the Zoning Bylaw, at 48 North Pleasant Street (Map 14A, Parcel 40, B-G, MPZ Zone), with the following conditions:

1. The hours of operation of the restaurant, including dine-in, take-out and delivery service shall be from 10:00 A.M. to 2:00 A.M., seven (7) days a week;
2. The number of patrons shall be limited to 40 patrons at any one time;
3. The restaurant, including dine-in, take-out and delivery service shall be managed according to the Management Plan approved by the Zoning Board of Appeals on February 26, 2009;
4. Parking for delivery service employees shall be at the rear of the building in accordance with the Parking Plan approved by the Zoning Board of Appeals on February 26, 2009;
5. There shall be no more than 15 employees on the premises at any one time;
6. Management shall be required to provide Center Parking Permits for a minimum of 20 employees in accordance with the Amherst Parking Permit regulations;
7. There shall be no outdoor dining allowed on the premises;
8. There shall be no alcohol served on the premises;
9. The north end of the terrace shall be blocked, by a gate, after 9:00 P.M. daily to prevent patrons from using the north terrace stairs;
10. The gate shall be reviewed by the Design Review Board prior to installation;
11. Management shall be responsible for supervision of the conduct of patrons waiting outside;
12. Management shall be required to pick-up daily any exterior trash or other debris left on the property and within the immediately-adjacent improved pedestrian portions of the public way;
13. Management shall be required to keep all exits free from obstruction at all times;
14. A revised sign plan shall be submitted to the Zoning Board of Appeals for review and approval at a public meeting which shows wooden signs on the north and east facades with exterior gooseneck lighting fixtures; the recessed portion of the east façade, furthest from North Pleasant Street, may contain an unlit canvas awning;
15. All exterior lighting shall be downcast;
16. The menu, as approved by the Zoning Board of Appeals on February 26, 2009, shall be served until closing;
17. Management shall require the delivery of goods to occur prior to 11:00 A.M.;
18. All noise levels shall not be audible from the outside of the restaurant or inside the building on the upper floors;
19. There shall be no live music or other live entertainment on the premises;
20. There shall be two (2) trash receptacles at the front doorway, which shall be emptied regularly;
21. The name and phone number of the on-site manager shall be provided to the Building Commissioner, Police and Fire Department; and
22. This permit shall expire upon change of ownership.

JANE ASHBY, acting Chair
Amherst Zoning Board of Appeals

DATE